

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2012 MAR -9 PM 12:56

FOR THE COUNTY OF YAVAPAI

SANDRA K. MARKHAM, CLERK

BY: Jacqueline Hashman

STATE OF ARIZONA,)

Plaintiff,)

vs.)

Case No. V1300CR201080049

JAMES ARTHUR RAY,)

Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE WARREN R. DARROW

TELEPHONIC PRETRIAL CONFERENCE

OCTOBER 4, 2010

Camp Verde, Arizona

ORIGINAL

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 APPEARANCES OF COUNSEL:

2 For the Plaintiff:

3 YAVAPAI COUNTY ATTORNEY'S OFFICE
4 BY: SHEILA SULLIVAN POLK, ATTORNEY
5 BY: BILL R. HUGHES, ATTORNEY
6 255 East Gurley
7 Prescott, Arizona 86301-3868
8 (Appearances by telephone.)

9 For the Defendant:

10 THOMAS K. KELLY, PC
11 BY: THOMAS K. KELLY, ATTORNEY
12 425 East Gurley
13 Prescott, Arizona 86301-0001
14 (Appearance by telephone.)

15 MUNGER TOLLES & OLSON, LLP
16 BY: LUIS LI, ATTORNEY
17 BY: TRUC DO, ATTORNEY
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19 Thirty-fifth Floor
20 Los Angeles, California 90071-1560
21 (Appearances by telephone.)
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1 Proceedings had before the Honorable
2 WARREN R. DARROW, Judge, taken on Monday, October 4,
3 2010, at Yavapai County Superior Court, Division Pro
4 Tem B, 2840 North Commonwealth Drive, Camp Verde,
5 Arizona, before Mina G. Hunt, Certified Reporter
6 within and for the State of Arizona.

1 P R O C E E D I N G S

2 THE COURT: I'm going to call the case -- we're
3 in open court. There is the another matter I
4 interrupted. That's fine. We have this set for
5 3:00 o'clock. I'll resume that other matter in a
6 moment.

7 Right now this is V1300CR201080049, State
8 versus James Arthur Ray. I have the telephonic
9 appearances. Really the purpose of today's
10 conference or hearing is to get a trial date set.
11 That's my understanding anyway.

12 Was there anything else that needed to be
13 discussed today?

14 MS. DO: Your Honor, we'd also like to schedule
15 the hearing regarding the monetary sanctions in
16 connection with the motion to compel.

17 THE COURT: I'm going to hold off in setting
18 anything just because the other matter I am
19 conducting over in Prescott. I just am not able to
20 set things right now. I can't say anything more
21 than that in terms of timing. Because I'm not sure
22 of the timing of things. I understand you're making
23 a request now. That's something I'm not going to be
24 able to set today.

25 MS. DO: All right, Your Honor.

1 MS. POLK: This is Sheila Polk. Does the
2 defendant waive his presence for this hearing?

3 THE COURT: Ms. Do or Tom Kelly. What about
4 Mr. Ray's appearance?

5 MS. DO: Yes.

6 THE COURT: Ms. Do is saying yes. It's
7 waived. After I set the date, I'm going to ask that
8 there be an affidavit from Mr. Ray acknowledging the
9 trial time and also really the matters that are
10 covered in Rule 9.1.

11 MR. KELLY: Judge, we will take care of that.
12 This is Tom Kelly.

13 THE COURT: I know I've already made the
14 advisement consistent with Rule 9.1. What needs to
15 be verified now is actual notice of the trial date.
16 Why don't I go ahead and address that. Let me ask
17 the parties again the number of trial days that are
18 requested.

19 Ms. Polk?

20 MS. POLK: Judge, can I have a moment, please?

21 THE COURT: Yes.

22 MS. POLK: Judge, at this point our best guess
23 is 60 trial days.

24 THE COURT: I think we had 56 days.

25 Ms. Do, Mr. Kelly?

1 MR. KELLY: Judge I'm going to defer to Ms. Do.

2 MS. DO: Our estimate of the defense case is
3 two weeks.

4 THE COURT: Okay.

5 And, Ms. Polk, were you talking about just
6 the state's case, and then I suppose adding some
7 time for rebuttal, or the 60 days was the estimate
8 of just the state's case?

9 MS. POLK: Judge, yes. We're trying to
10 anticipate cross-examination. But yes. Just the
11 state's case.

12 THE COURT: As I've indicated before, I guess
13 it was 56 days. At this time, anyway, I'm going to
14 set the trial for a total of 65 days. As we get
15 closer, as we consider jury selection matters, I
16 will look more carefully at the time. But at this
17 point 65 days.

18 And what I'm going to do is what I did
19 last time, which is announce a first day of trial.
20 And then just indicate it would be my intention to
21 use every day of the week possible to conduct the
22 trial rather than having three-day trial weeks and
23 then just extending the trial even longer in terms
24 of the number of weeks involved, to try to use every
25 day available for trial. Which would mean all days

1 of the week except Monday.

2 And then if there is a holiday that falls
3 on a Monday, then the trial would have just three
4 days that particular week. It would be Wednesday.
5 But other than that time, it would be beginning on
6 Tuesday.

7 Is that consistent with what the parties
8 would want to do as well, just to have trial as many
9 days as possible?

10 MS. POLK: Yes.

11 MS. DO: Yes for the defense, Your Honor.

12 THE COURT: Okay. Then I did have the request
13 that trial start mid February. So I'm going to
14 order that trial begin on Wednesday, February 16,
15 2011. February 16, 2011.

16 And trial time will be, we'll say,
17 10:00 a.m. on February 16, pretrial conference
18 8:30 a.m. I know we have other matters to
19 consider. And I'm going to confirm some hearing
20 times, in a minute, in November.

21 But I'm going to set that first day of
22 trial and then just issue a minute entry that will
23 have the specific days listed, as I've outlined.
24 Basically, four-day trial weeks when possible. And
25 I will do that.

1 Also in the minute entry I'm going to set
2 final motion deadline. And I think, Counsel, that's
3 probably going to fall on about mid December.

4 Will there be any problem with that,
5 Ms. Polk?

6 MS. POLK: Judge, I see a problem in that the
7 state still has not received any disclosure or very
8 much disclosure from the defense. The rules do give
9 us up to 20 days preceding trial to file motions.
10 And then, of course, disclosure can occur up to 30
11 days with notice and 7 days otherwise under
12 Rule 17.

13 So I'm -- it puts the state in a difficult
14 position when we have received very little
15 disclosure from the defense to be looking at a
16 motion deadline. We've done our best already to
17 anticipate what motions we can at this point. But
18 we are operating without very much information. I
19 would request from the Court that we operate under
20 the standard 20 days deadline prior to trial for
21 motions.

22 THE COURT: And, you know, the only reason I do
23 accelerate the deadline is to make sure we have days
24 to conduct evidentiary hearings, especially in cases
25 that involve possible complex issues. That's the

1 only reason I do it.

2 I think the law does, of course, say
3 unless otherwise ordered by the Court or something
4 to that effect.

5 Ms. Polk, I understand what you're
6 saying. And let me ask Ms. Do or Mr. Kelly about
7 the disclosure situation. Because there can be
8 motions brought very soon if that is an issue. But
9 I don't know anything about that other than what
10 Ms. Polk has now stated.

11 So if one of the defense attorneys would
12 address that, please.

13 MS. DO: I can address that, Your Honor. We
14 have provided the state with disclosure that is in
15 our possession to date. We've identified the name
16 of the only expert that we at this time intend use.

17 We've told Ms. Polk that we'd be happy to
18 arrange for an interview once the state has complied
19 with its disclosure under the rules -- their
20 experts. Our expert has not also completed his
21 analysis, so the report on that has not been done.

22 Other than that one expert witness, we
23 have not identified any other witnesses that are not
24 contained in the state's notice for which they have
25 interviews and reports on. So at this point the

1 defense is in compliance with disclosure.

2 THE COURT: Is there a pleading filed to that
3 effect, Ms. Do, that informs the state that these
4 are the witnesses? Is this an assumption that's
5 being made or --

6 MS. DO: Your Honor --

7 THE COURT: Go ahead.

8 MS. DO: I'm sorry, Your Honor. We did file
9 both an initial statement and a supplemental
10 disclosure stating exactly what I just indicated on
11 the record.

12 THE COURT: Well, I want cases to be heard on
13 the merits. And the rules are really to facilitate
14 that, not frustrate that goal. I don't want people
15 not following the rules thinking it's something that
16 can be fixed later. Because sometimes it can't.

17 Ms. Polk, I understand what you're saying
18 about the motion deadline. And certainly if it's a
19 question of late disclosure on either side, that has
20 to be dealt with. And I really hope we're not
21 dealing with that in this matter at all.

22 But I'm going to consider motions in the
23 interest of justice. And I just don't want to get
24 up to the trial time and find out that -- you
25 know -- there is going to be a day or two or more of

1 evidentiary hearing required and we're not able to
2 proceed.

3 What I do then is maybe put the -- I'll
4 put a motion deadline. I'll accelerate it
5 somewhat. How about mid January, somewhere in
6 there, and then just to make sure we cover things
7 that might require some time? I'm going to do that.

8 But obviously if there are late disclosure
9 issues -- and I hate to even say that. I don't want
10 that to be happening. Those will be dealt with in
11 accordance with the rules.

12 MS. POLK: And, Judge, I appreciate you
13 recognizing that the parties may be in a position to
14 be filing motions that are past -- in accordance
15 with the motion deadline, in the interest of
16 justice. And I didn't mean to suggest that there is
17 late disclosure going on; because, again, Rule 15
18 itself allows disclosure up till trial. So it's not
19 an issue of a party being late.

20 The issue is as the state becomes aware of
21 an issue that does warrant the Court's attention
22 prior to taking the case to the jury, that we are in
23 a position that we can bring those motions to you
24 and have them heard rather than say we missed the
25 deadline, therefore you can't raise this issue.

1 THE COURT: Okay. I don't want to set some
2 deadline that's artificially early; because, as I
3 understand, as cases approach, people work more
4 intensively on them and discover things they haven't
5 seen before.

6 So I'm going to set a second motion
7 deadline for mid January and only say that I'm going
8 to follow the rules of criminal procedure as best I
9 can and deal with issues that may arise. If
10 something comes up and parties have both been
11 diligent in preparing their cases, then I'm going to
12 hear the motion and, again, look toward having the
13 case decided on the merits as long as one side or
14 the other is not unfairly prejudiced by a discovery
15 decision or a disclosure decision.

16 So that's what I'll do. There will be a
17 date somewhere mid January. It will be subject to
18 what I've mentioned about having the case heard on
19 the merits consistent with the rules.

20 I'm going to confirm at this time that we
21 do have evidentiary hearings set on pending motions
22 for November 9th, 10th and 16th, three full days, I
23 believe. And only state what I have before, which
24 is I am involved in another matter, and I just
25 can't -- well, I'm confirming those dates at this

1 time.

2 It is another case that is some length.
3 And if there is some reason that those hearing dates
4 would not be possible -- the 9th, 10th and 16th,
5 that is -- I will just let the parties know as soon
6 as I can. But right now I am confirming them.

7 And, Ms. Do, if anybody else wants
8 anything else heard, please file that in a written
9 motion.

10 That goes for the state too, Ms. Polk.

11 And we'll try to get everything scheduled
12 in November that's joined.

13 MS. DO: Yes, Your Honor.

14 THE COURT: Okay.

15 Ms. Polk, is there anything else that you
16 would like to discuss from the state's perspective?

17 MS. POLK: No, Your Honor. Thank you.

18 THE COURT: Ms. Do?

19 MS. DO: No, Your Honor. Thank you.

20 THE COURT: All right. We will adjourn on this
21 matter.

22 Thank you.

23 (The proceedings concluded.)

24

25

1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3 I, Mina G. Hunt, do hereby certify that I
4 am a Certified Reporter within the State of Arizona
5 and Certified Shorthand Reporter in California.

6 I further certify that these proceedings
7 were taken in shorthand by me at the time and place
8 herein set forth, and were thereafter reduced to
9 typewritten form, and that the foregoing constitutes
10 a true and correct transcript.

11 I further certify that I am not related
12 to, employed by, nor of counsel for any of the
13 parties or attorneys herein, nor otherwise
14 interested in the result of the within action.

15 In witness whereof, I have affixed my
16 signature this 7th day of May, 2011.

17 *Mina G. Hunt*
18 -----
19 MINA G. HUNT, AZ CR No. 50619
20 CA CSR No. 8335